



July 15, 2019

Board of Governors of the Federal Reserve System
Ann E. Misback, Secretary
20th Street and Constitution Ave NW Washington, DC 20551

Via email to regs.comments@federalreserve.gov

Re: Docket No. R-1662 and RIN 7100-AF

Dear Board of Governors,

Thank you for the opportunity to comment on the draft rule ("Rule") published on May 14, 2019 proposing to adopt more detailed standards for determining when an entity is deemed to control a bank holding company or a member bank. This is a timely and important matter that will be substantially clarified if the proposed new Rule is adopted. The Utah Bankers Association and the National Association of Industrial Bankers¹ are sending this letter jointly on behalf of our member banks, which have a vital interest in this matter.

The main problem our member banks and their owners have encountered under the current standards regarding control concerns their ability to raise capital. In an industry in which "capital is king," this is not a trivial issue.

At the same time, we recognize that restricting unauthorized control or influence over a holding company or bank is one of the most important and critical responsibilities of any bank regulator and great care is needed when fashioning standards for determining when control is being or could be exercised.

The current standards for determining control mostly follow the definition of control in the Bank Holding Company Act, 12 U.S.C. 1841 et seq. without further elaboration. In broad terms, the law says any entity controlling over 5% but less than 25% of any class of voting shares is presumed to control the holding company, and indirectly the bank.

Although the presumption of control is rebuttable, that is not a workable solution in most cases. Rebutting the presumption each time a holding company issues new shares takes time. In addition, decisions to buy or not buy are often made quickly, or potential buyers just do not consider it worth the effort to rebut the presumption when there are other investment options.

¹ First chartered in 1910, industrial banks operate under a number of titles; industrial loan banks, industrial loan corporations, or thrift and loan companies. These banks engage in consumer and commercial lending on both a secured and unsecured basis. They do not offer demand checking accounts but do accept time deposits, savings deposit money market accounts and NOW accounts. Industrial banks provide a broad array of products and services to customers and small businesses nationwide, including some of the most underserved segments of the US economy.

The Utah Bankers Association is the professional and trade association for Utah's commercial banks, savings banks and industrial banks. Established in 1908, the UBA serves, represents and advocates the interests of its members, enhancing their ability to be preeminent providers of financial services.

The problem especially affects capital raising efforts of small and medium size banks. Medium size and larger banks and their holding companies especially are reliant on institutional investors. Many institutional investors are unwilling to become a bank holding company and subject to the Volcker Rule and so will invest in a bank holding company only if their holdings remain below 5% of voting shares.

In addition, most institutional investors have their own programs and standards to select and monitor their investments that include investment minimums. Those minimums are often close to or more than 5% of the shares of a medium size bank holding company. Even when they are less than 5%, many institutional investors want the ability to increase their position in a particular stock when they foresee likely price increases. Our members and their parent companies have encountered situations where an investor initially acquired less than 5% of a company's shares. The investor held the stock and over time it crept over 5%. Investors were then required to sell shares to get below 5% even if the market conditions at that time were not optimal for selling. Such experiences have chilled the market for bank holding company shares.

That is not an issue for the largest holding companies. Investors can invest billions in the largest holding companies and not get near 5% of their voting shares. That gives large holding companies an advantage in the capital markets over their medium size competitors and may partly account for the greater growth of the largest holding companies during the past several years compared to their smaller competitors.

The proposed Rule follows a model already used in a few individual cases. Some large institutional investors such as mutual funds have entered into agreements with the Board of Governors that enable the investors to be classified as passive and non controlling if they stay below specified limits on percentage ownership, board representatives and independent voting, among other things. The proposed Rule would only extend that model to all investors and avoid the inconvenience of requiring each investor to negotiate its own agreement. That, in turn, should increase the flow of capital into banks, especially medium and small banks, without any significant risk of an investor exercising undue and unauthorized control over the bank.

We also note that complying with the proposed standards would only rebut a presumption of control. The Board could still determine that an investor is exercising unauthorized control if it attempted to significantly influence the management and policies of the bank in other ways.

Our members have no general concerns with the specific conditions in the proposed Rule. Our members want to make it easier for truly passive investors to buy shares in their holding companies up to the 25% threshold for control specified in the statute. We believe the Board has been thoughtful and developed reasonable standards in the proposed Rule to distinguish between those investors that only seek to acquire shares as part of a broader investment strategy and investors seeking to target a particular holding company or influence the management of the company or enter into other transactions with it.

For these reasons, we commend the Board for its efforts to develop this Rule and support its final adoption.

Sincerely,



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